

## Federal Acquisition Regulation

12.101

(b) The contracting officer may insert the clause at 52.211-17, Delivery of Excess Quantities, in solicitations and contracts, when a fixed-price supply contract is contemplated.

(c) The contracting officer shall insert the clause at 52.211-18, Variation in Estimated Quantity, in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items.

[48 FR 42159, Sept. 19, 1983, as amended at 54 FR 34753, Aug. 21, 1989. Redesignated and amended at 60 FR 48241, Sept. 18, 1995]

### PART 12—ACQUISITION OF COMMERCIAL ITEMS

Sec.

12.000 Scope of part.

12.001 Definition.

#### Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.

12.102 Applicability.

#### Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

12.202 Market research and description of agency need.

12.203 Procedures for solicitation, evaluation, and award.

12.204 Solicitation/contract form.

12.205 Offers.

12.206 Use of past performance.

12.207 Contract type.

12.208 Contract quality assurance.

12.209 Pricing of commercial items when contracting by negotiation.

12.210 Contract financing.

12.211 Technical data.

12.212 Computer software.

12.213 Other customary commercial practices.

#### Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

12.303 Contract format.

#### Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.

12.402 Acceptance.

12.403 Termination.

12.404 Warranties.

#### Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items

12.500 Scope of subpart.

12.501 Applicability.

12.502 Procedures.

12.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

#### Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

12.601 General.

12.602 Streamlined evaluation of offers.

12.603 Streamlined solicitation for commercial items.

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 60 FR 48241, Sept. 18, 1995, unless otherwise noted.

#### 12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government's preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

#### 12.001 Definition.

*Subcontract*, as used in this part, includes, but is not limited to, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

#### Subpart 12.1—Acquisition of Commercial Items— General

##### 12.101 Policy.

Agencies shall—

(a) Conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements;

(b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and

(c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

#### **12.102 Applicability.**

(a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at section 2.101.

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14, Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of this chapter. When a policy in another part of this chapter is inconsistent with a policy in this part, this part 12 shall take precedence for the acquisition of commercial items.

(d) This part shall not apply to the acquisition of commercial items—

(1) At or below the micro-purchase threshold;

(2) Using the SF 44 (see 13.505);

(3) Using the imprest fund (see subpart 13.4); or

(4) Using the Governmentwide commercial purchase card.

[60 FR 48241, Sept. 18, 1995, as amended at 61 FR 39192, July 26, 1996]

### **Subpart 12.2—Special Requirements for the Acquisition of Commercial Items**

#### **12.201 General.**

Public Law 103–355 establishes special requirements for the acquisition of commercial items intended to more

closely resemble those customarily used in the commercial marketplace. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

#### **12.202 Market research and description of agency need.**

(a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see part 11), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services to offer. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's need in these terms allows offerors to propose methods that will best meet the needs of the Government.

(c) Follow the procedures in subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions.

#### **12.203 Procedures for solicitation, evaluation, and award.**

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14, Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in 12.603.

#### **12.204 Solicitation/contract form.**

The Standard Form 1449, Solicitation/Contract/Order for Commercial